

Randy M. Friedberg (RF-8645)
Christine W. Wong (CW-7683)
OLSHAN GRUNDMAN FROME ROSENZWEIG & WOLOSKY LLP
Park Avenue Tower
65 East 55th Street
New York, New York 10022
(212) 451-2300

Rod S. Berman (*Admitted Pro Hac Vice*)
Brian W. Kasell (*Admitted Pro Hac Vice*)
JEFFER MANGELS, BUTLER & MARMARO LLP
1900 Avenue of the Stars, Seventh Floor
Los Angeles, California 90067-4308
(310) 203-8080

*Attorneys for Defendants MANLEY TOY DIRECT, LLC
And J.C. PENNEY, INC.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRIME TIME TOYS, LTD.,

Plaintiff,

v.

MANLEY TOY DIRECT, LLC,
MANLEY TOY QUEST, INC. and J.C.
PENNEY, INC.,

Defendants

ECF Case

No. 08 CV 02335

**DEFENDANT J.C. PENNEY, INC.'S,
ANSWER TO COMPLAINT**

Defendant J.C. Penney, Inc. ("Defendant") hereby submits its Answer to the Complaint in the matter filed by plaintiff Prime Time Toys, Ltd. ("Plaintiff"). Unless indicated differently, each paragraph below corresponds with the paragraph of the Complaint bearing the same number. To the extent that any unnumbered captions, headings or statements in the Complaint are treated as allegations, such captions, headings and statements are hereby denied.

THE PARTIES

1. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 1 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

2. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 2 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

3. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 3 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

4. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 4 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

5. Defendant admits that the documents attached to the Complaint as Exhibit G in all respects speak for themselves. Except as specifically admitted herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 5 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

6. Defendant admits the allegations contained in Paragraph 6 of the Complaint.

7. The allegations contained in Paragraph 7 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant responds that it lacks sufficient knowledge or information regarding the allegations in Paragraph 7 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

8. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 8 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

9. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 9 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

10. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 10 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

11. The allegations contained in Paragraph 11 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 11 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

12. The allegations contained in Paragraph 12 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 12 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

13. The allegations contained in Paragraph 13 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 13 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

14. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 14 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

15. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 15 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

16. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 16 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

17. The allegations contained in Paragraph 17 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 17 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

18. The allegations contained in Paragraph 18 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 18 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

19. The allegations contained in Paragraph 19 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 19 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

20. Defendant admits that it has offered for sale and sold toys in New York State and this judicial district. Defendant admits that it has retail locations in this judicial district, including at Bay Plaza Mall, 100 Baychester Avenue, Bronx, New York 10475.

21. The allegations contained in Paragraph 21 of the Complaint are legal conclusions and require no response from Defendant.

22. The allegations contained in Paragraph 22 of the Complaint are legal conclusions and require no response from Defendant.

23. The allegations contained in Paragraph 23 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant admits that it is doing business in the State of New York, but denies that it has committed acts of patent or trademark infringement in, or having effects in, the State of New York or this judicial district.

24. The allegations contained in Paragraph 24 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 24 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

BACKGROUND

25. Defendant lacks sufficient knowledge or information regarding the allegations contained in Paragraph 25 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

26. Defendant admits that the document attached to the Complaint as Exhibit B in all respects speaks for itself. Except as specifically admitted and alleged herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 26 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

27. Defendant admits that the document attached to the Complaint as Exhibit C in all respects speaks for itself. Except as specifically admitted and alleged herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 27 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

28. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 28 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

29. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 29 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

30. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 30 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

31. Defendant admits that the document attached to the Complaint as Exhibit D in all respects speaks for itself. Defendant admits that it has sold and offered for sale a toy named Banzai Hydro Cannon. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 31 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

32. The allegations contained in Paragraph 32 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 32 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

33. Defendant denies each and every allegation contained in Paragraph 33 of the Complaint as it pertains to Defendant. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 33 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

34. Defendant denies each and every allegation contained in Paragraph 34 of the Complaint as it pertains to Defendant. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 34 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

35. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 35 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

36. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 36 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

37. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 37 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

38. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 38 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

39. Defendant admits that the document attached to the Complaint as Exhibit E in all respects speaks for itself. Except as specifically admitted and alleged herein Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 39 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

40. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 40 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

41. Defendant admits that the document attached to the Complaint as Exhibit F in all respects speaks for itself. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 41 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

42. Defendant admits that the document attached to the Complaint as Exhibit G in all respects speaks for itself. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 42 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

43. The allegations contained in Paragraph 43 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information to regarding the allegations in Paragraph 43 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

44. Defendant admits that the document attached to the Complaint as Exhibit G in all respects speaks for itself. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 44 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

45. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 45 of the Complaint to admit or deny and, on that basis denies each and every allegation contained therein.

46. Defendant admits that the document attached to the Complaint as Exhibit H in all respects speaks for itself. Except as specifically admitted and alleged herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 46 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

47. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 47 of the Complaint to admit or deny and, on that basis, denies each and every allegation contained therein.

COUNT I

PATENT INFRINGEMENT OF U.S. PATENT NO. 7,281,642

48. In response to Paragraph 48 of the Complaint, Defendant hereby repeats and incorporates herein by reference, the responses to Paragraphs 1 through 47 of the Complaint above, as though fully set forth herein.

49. Defendant denies each and every allegation contained in Paragraph 49 of the Complaint as it pertains to Defendant. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient knowledge or information regarding the allegations in

Paragraph 49 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

50. Defendant denies each and every allegation contained in Paragraph 50 of the Complaint as it pertains to Defendant. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 50 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

51. The allegations contained in Paragraph 51 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant denies each and every allegation contained in Paragraph 51 of the Complaint as it pertains to Defendant. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 51 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

52. The allegations contained in Paragraph 52 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant denies each and every allegation contained in Paragraph 52 of the Complaint as it pertains to Defendant. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 52 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

53. The allegations contained in Paragraph 53 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant denies each and every allegation contained in Paragraph 53 of the Complaint as it pertains to Defendant. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient

knowledge or information regarding the allegations in Paragraph 53 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

54. The allegations contained in Paragraph 54 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant denies each and every allegation contained in Paragraph 54 of the Complaint as it pertains to Defendant. Except as specifically admitted, alleged, and denied herein, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 54 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

COUNT II

TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT

55. In response to Paragraph 55 of the Complaint, Defendant hereby repeats and incorporates herein by reference, the responses to Paragraphs 1 through 54 of the Complaint above, as though fully set forth herein.

56. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 56 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

57. The allegations contained in Paragraph 57 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 57 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

COUNT III

UNFAIR COMPETITION UNDER THE LANHAM ACT

58. In response to Paragraph 58 of the Complaint, Defendant hereby repeats and incorporates herein by reference, the responses to Paragraphs 1 through 57 of the Complaint above, as though fully set forth herein.

59. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 59 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

60. The allegations contained in Paragraph 60 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 60 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

COUNT IV

UNFAIR TRADE PRACTICES - NEW YORK GENERAL BUSINESS LAW § 360-1

61. In response to Paragraph 61 of the Complaint, Defendant hereby repeats and incorporates herein by reference, the responses to Paragraphs 1 through 60 of the Complaint above, as though fully set forth herein.

62. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 62 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

63. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 63 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

64. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 64 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

65. The allegations contained in Paragraph 65 of the Complaint are legal conclusions and require no response from Defendant. To the extent a response is required, Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 65 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

66. Defendant lacks sufficient knowledge or information regarding the allegations in Paragraph 66 of the Complaint to admit or deny and, on that basis, denies each and every remaining allegation contained therein.

AFFIRMATIVE DEFENSES

Defendant incorporates herein each and every allegation contained in its responses to the Complaint contained in paragraphs 1 through 66 above. As separate affirmative defenses to the Complaint, Defendant further alleges as follows:

FIRST AFFIRMATIVE DEFENSE

67. Defendant alleges that each of Plaintiff's purported claims for relief against Defendant is frivolous and unsupported.

SECOND AFFIRMATIVE DEFENSE

68. Defendant cannot be liable for the damages, if any, alleged in the Complaint and in each and every cause of action therein, nor can its conduct be enjoined based thereon, because each and every cause of action fails to state a claim and/or cause of action upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

69. Each claim of the '642 Patent is invalid because it fails to meet the conditions for patentability set forth in 35 U.S.C. §§ 101 *et seq.*, including, without limitation, 35 U.S.C. §§ 102 and 103 and for failing to meet the requirements of 35 U.S.C. § 112. The preceding allegations are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

FOURTH AFFIRMATIVE DEFENSE

70. Plaintiff is barred in whole or in part from recovering damages by operation of 35 U.S.C. § 287. The preceding allegations are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

FIFTH AFFIRMATIVE DEFENSE

71. Defendant has not infringed, induced infringement of, or contributed to the infringement of any valid claim of the '642 Patent.

SIXTH AFFIRMATIVE DEFENSE

72. Defendant alleges that it cannot fully anticipate all affirmative defenses that may be applicable to this action based upon the conclusory terms used in the Complaint. Accordingly, Defendant expressly reserves the right to assert further defenses if, and to the extent that such affirmative defenses become available.

WHEREFORE, Defendant J.C. Penny, Inc. prays for the order and judgment of the United States District Court:

1. That Plaintiff take nothing by its Complaint;
2. That the Complaint be dismissed with prejudice;
3. That the Defendant recover the costs of the suit incurred herein; and
4. That this Court grant such other relief as it deems just and proper.

Dated: New York, New York
May 5, 2008

OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP

By: /s/ Randy M. Friedberg
Randy M. Friedberg (RF-8645)
Christine W. Wong (CW-7683)
Park Avenue Tower
65 East 55th Street
New York, New York 10022
(212) 451-2300

and

Rod. S. Berman (admitted pro hac vice)
Brian W. Kasell (admitted pro hac vice)
JEFFER, MANGELS, BUTLER &
MARMARO, LLP
1900 Avenue of the Stars, Seventh Floor
Los Angeles, California 90067
Phone: (310) 203-8080

*Attorneys for Defendants Manley Toy
Direct, LLC and J.C. PENNEY, INC.*